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India's homosexual discrimination and health consequences

Discriminação a homossexuais na Índia e conseqüências à saúde

ABSTRACT

A large number of countries worldwide have legalized homosexual rights. But for 147 years, since when India was a British colony, Section 377 of the Indian Penal Code defines homosexuality as a crime, punishable by imprisonment. This outdated law violates the fundamental rights of homosexuals in India. Despite the fact that literature drawn from Hindu, Buddhist, Muslim, and modern fiction testify to the presence of same-sex love in various forms, homosexuality is still considered a taboo subject in India, by both the society and the government. In the present article, the continuation of the outdated colonial-era homosexuality law and its impact on the underprivileged homosexual society in India is discussed, as well as consequences to this group's health in relation to HIV infection.

KEY WORDS: Homosexuality, male. Prejudice. Legislation. Sexual and reproductive rights. Acquired Immunodeficiency Syndrome, transmission. India.

RESUMO

Muitos países têm legalizado os direitos homossexuais. Mas há 147 anos, desde quando a Índia ainda era colônia britânica, a Seção 377 do Código Penal indiano define a homossexualidade como crime passível de prisão. Esta lei antiga viola os direitos fundamentais de homossexuais na Índia. Embora as literaturas hindu, budista, muçulmana, e a ficção moderna confirmem a presença de sentimento de amor entre pessoas do mesmo sexo, a homossexualidade ainda é considerada um tabu na Índia, tanto pela sociedade como pelo governo. No presente artigo, discute-se a continuidade dessa lei da época colonial sobre homossexualidade e seu impacto na sociedade indiana desfavorecida, bem como as conseqüências para a saúde desse grupo quanto à infecção pelo HIV.

DESCRIPTORIOS: Homossexualidade masculina. Preconceito. Legislação. Direitos sexuais e reprodutivos. Síndrome de Imunodeficiência Adquirida, transmissão. Índia.

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INTRODUCTION

The subject of homosexuality has globally traveled a long way over the past several decades from criminality, immorality, sickness, and, finally to an alternative life-style. South Africa was the first country to constitutionally safeguard the rights of homosexuals in 1994. Several countries in the West followed suit to have similar laws. However, in the world's largest democratic nation of India, homosexuality is considered illegal and punishable by imprisonment. The thorny issue on the continuation of India's colonial-era homosexuality law and its impact on homosexuals' health have seldom been discussed by sociologists and medical experts. In the present article, some insight is given into India's outdated law and its consequences leading to social and health anguish among the often ignored and marginalized homosexual community.

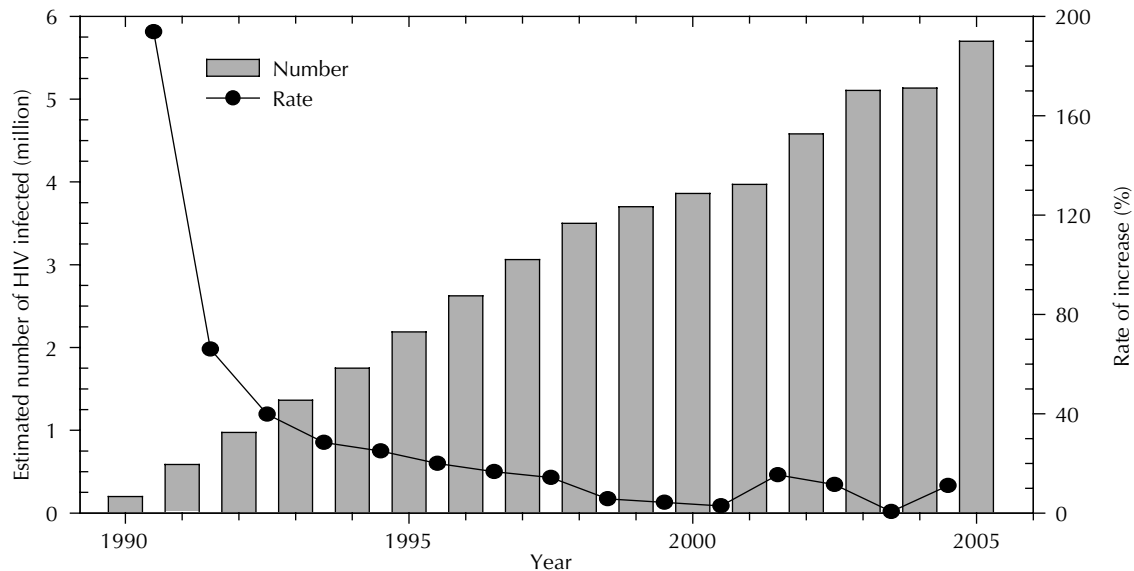
HOMOSEXUAL PREJUDICE IN MODERN INDIA

The major provisions of criminalization of same-sex acts are found in the Section 377 of the Indian Penal Code of 1860 which treats gay sex as an 'unnatural' offense, and punishable by imprisonment. This section states "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine." This law is originally based on the centuries old fallacy that sodomy is equivalent to homosexuality. Between 1860 and 1992, only 30 cases were officially registered in India's provincial High Courts and the Supreme

Court. In fact, the law does not distinguish sodomy between males, and between male and female, and most of the registered cases targeted more males than females. The homosexual society across India remains vulnerable to police aggravation and prosecution due to this law in effect. Therefore they fear to seek help for sexually transmitted diseases including HIV/AIDS.

For example, in New Delhi, police arrested 18 men in 1992 from a park on the suspicion that they were homosexuals. After protest by international human rights groups, they were released from police custody after filing a petty case against them. Another case was reported in a small village in Gujarat State two decades ago, where Ms. Tarulata underwent a female-to-male sex change operation and changed her name to Mr. Tarun Kumar. He later married Ms. Lila in 1989. But Lila's father filed a petition in the provincial High Court stating that it's a lesbian relationship so the marriage must be null and void — the petition called for criminal action under Section 377.

What is more aggravating is that in Lucknow city, the local police force has been bizarrely upbeat in its attempt to enforce Section 377. In 2001, police invaded two offices of the local AIDS prevention organizations to arrest their staff for promoting homosexuality. In January 2006, police arrested four men accusing them of operating an online "gay racket" and engaging in unnatural sex. Human rights groups condemned the arrest and India's coordinator for UNAIDS stated that treating homosexuals as criminals increases the stigma and therefore hinders the fight against HIV/AIDS.



Source: National Control Organization of India and UNAIDS.

Figure. Estimated total number of HIV infected people in India from 1990 to 2005.

HOMOPHOBIA LEADING TO HEALTH CONSEQUENCES

The existence of homosexuality law is a stumbling block to prevent gay men from coming forward to test for HIV/AIDS. It also frustrates social workers for not being able to provide information regarding treatment, monitoring and counseling to the homosexuals. The first report of HIV infection in India was in 1986. Within just two decades, this immune-stripping disease has infected over five million people (Agoramoorthy & Hsu,¹ 2006) (Figure). A survey conducted a decade ago of 1200 self-identified homosexual men in South Asia (largely India) indicates that the vast majority of them were married and living with their wives, reflecting the culture that dictates people to marry the opposite sex, irrespective of their sexual orientation (Khan,³ 1994). Recent reports in India indicate high HIV prevalence among homosexual men (Go et al,² 2004, Lalit et al,⁴ 2005). The number of predominantly homosexual men in India may exceed 50 million, but accurate data are difficult to gather due to the homosexuality legal barrier.

A culturally identifiable group in India known in the Urdu language as *hijra* deserves special attention in terms of health care programs since many of them work as male prostitutes; they are often ignored by the mainstream Indian society. These castrated men dress as women and some are hermaphrodites, born with ambiguously male-like genitals. Their exact population is not known since census data designate them as females. According to estimates, their population range from 50,000 to 500,000 (Nanda,⁵ 1989).

Health experts have already raised alarm bells over the spread of AIDS in Asia (UNAIDS,⁶ 2002). The government of India is increasingly committing for control efforts but it regrettably continues to ignore the implications of the Section 377 to India's gay community. There is not enough public awareness on India's homosexual society. Therefore, it's crucial for sociologists, culturologists and health workers to take a leading role to reach out to policy makers, politicians, community leaders, and media to pinpoint the negative health consequences of the homosexuality law.

In 1994, a team of medical doctors visited India's notorious Tihar jail located in Delhi and reported high prevalence of homosexual activities among male inmates. The team recommended prison authorities to provide condoms to inmates to reduce the risk of sexually transmitted diseases including AIDS. But the prison managers refrained from making provisions of condoms citing that would indicate approving a

criminal offense under Section 377. As a consequence, a local human rights group filed litigation in Delhi High Court. It challenged the legal validity by stating that the outdated homosexuality law does not recognize the rights for an individual citizen's privacy, which is in fact a fundamental right of life and liberty under the Article 21 of India's constitution.

The initial responses of the judges were homophobic. They questioned the petitioners whether they wanted to promote free and pervasive sex, but later they heard the petition. This is the only case where an anti-discrimination petition has been filed against the homosexual law in India. However, the court subsequently refused to consider the petition on the legality of the law saying that the petitioners, who work for a local non-profit agency, have no *locus standi* (meaning, the right of the litigant to act or be heard in the matter).

CULTURAL REMINDERS OF HOMOSEXUALITY AND FUTURE

In the Hindu-dominated Indian society, religion has strong roots in social and cultural affairs. What most people forget to realize today is homosexuality indeed has an ancient historical base in India. Hindu religious texts such as *Rig Veda* dated back 1500 BC, and sculptures of India's ancient temples represent explicit homosexual acts. The ancient Hindu text *Kama Sutra* describes homosexuality more vividly than any other ancient texts. Intriguingly, some of the Hindu religious deities change gender to participate in homoerotic behaviors. When compared to other world religions, the Hindu religion appears to be one of the oldest to accept homosexuals as part of society. Nonetheless, sexuality on the whole is a taboo in the traditionalist India today, and regrettably, the society often regards same-sex relationships profane. India's leading politicians and policymakers ignore the rights of homosexuals. When asked by a journalist about the allowing of gay marriage in Canada, the Indian Prime Minister, Manmohan Singh's reply was that "there would not be much appreciation for a law like that in India".

It's time for people in India to debate on the issue of homosexuality. Public awareness and sex education for all should be the bottom line to unravel the sexuality taboo and to create compassion and respect to India's homosexuals. If India needs to be recognized globally as a true democratic nation, it has to ultimately revise or abolish the prejudicial law so that the ignored homosexual society can be free at last.

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